

# Freedom of Information (FOI) Reform

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## Public Submission

### Information Commissioner Bill 2009

Role and functions  
of the proposed

### Information Commissioner

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## **1. General comments**

### ***Establishment of the Information Commissioner***

The Australian Government is to be commended on its initiative in establishing the statutory role of the Information Commissioner. The absence of a statutory advocate for the legitimate public interest in information held by the Government is a fundamental deficiency in the democratic relationship between citizens, organisations and government.

The primary focus of the Information Commissioner must be on ensuring that accessible, equitable and effective mechanisms are established and maintained over time for the articulation of legitimate public demand for and access to information held by the Government. The Information Commissioner must play a central role in building an improved basis for public trust and confidence in the Government's stewardship and custodianship of citizen and corporate information.

What is less clear is the extent to which the Information Commissioner can or should attempt to shape and direct the internal administrative arrangements of agencies for the governance and management of information and data. There is a strong case for a separate role and functions, standing within the administrative structure of the Australian Public Service. This role would have legislative and regulatory powers to make directions about general administrative policy and arrangements across and within agencies for governing and managing the supply of information and data to all stakeholders including the public, individual citizens, organisations, governments and other agencies. This issue is addressed in this submission.

### ***Information as a national resource***

In his covering message to the Companion Guide, the Cabinet Secretary states that "Information held by the Government is a national resource and should be managed in the national interest". The statement is commendable, and is aligned with similar statements of principle and intent in other national jurisdictions. However, in the absence of formal administrative arrangements for the governance and management of government-held information and data as actual resources and assets, the statement is rhetorical. This issue is addressed in this submission.

### ***Information publication scheme***

The establishment of a statutory framework for the pro-active publication of standard information by agencies is commendable. The establishment of standard publication arrangements has been long identified as an effective mechanism for both improving the supply of legitimate public information and reducing information costs. However, in the absence of a statutory imperative or consistent framework, agencies have been reluctant to make the initial investment in these arrangements, notwithstanding the potential for significant efficiencies over time.

A significant issue that will adversely impact this initiative is the lack of a consistent approach across agencies (or even within agencies) for the definition of information and data. This issue must be addressed effectively in the proposed structural reforms, and is addressed in this submission.

### ***Stewardship and custodianship of information***

The concepts of stewardship and custodianship for information held by governments are now well established and accepted in other jurisdictions, and in other Australian Government legislation and administrative policy (Financial Management and Accountability Act, MAC Report 2). Although the concepts are implied in the proposed bill they are not explicitly defined. This issue is addressed in this submission.

### ***Imperatives for improved performance – best practice or legislation***

The general implication of the proposed Information Commissioner Bill is that agencies will improve their performance in the management of information by progressively adopting best practice approaches to meet the statutory requirements established by the Information Commissioner.

In the 14 years since the original Office of Government Information Technology (OGIT) was established (now AGIMO), there is no compelling evidence that best practice approaches have led to any fundamental improvement in the governance and management of information and data across or within Australian Government agencies.

There is a strengthening view that fundamental improvement will require the clear imperative of administrative legislation, along the lines of that implemented for the effective management of financial resources and assets held by the Australian Government (FMA Act, Audit Act). There is some evidence that agency heads would welcome this development. This issue is addressed in this submission.

## **2. Earlier submission relevant to this submission (attached)**

in January 2008 I made a public submission to the 2008-09 Budget process, titled "An initiative for continuous improvement of the Australian Government general government sector's capability, performance and efficiency".

The submission contains several sections with direct relevance to this submission, including:

- Executive Summary – Section 1
- Information Management Improvement Program (IMIP)– Section 3
- Reporting Management Improvement Program (RMIP)– Section 4

The submission is currently being redrafted to address significant changes in the economic situation since early 2008, and a revised version will be submitted for consideration to relevant central agencies including DPM&C, APSC, AGIMO, Treasury and ANAO by 30 June 2009. A copy of the original submission is attached for reference and general information.

## **3. Information Management and Accountability Act (IMA)?**

Following the implementation of public service reform in the early 1980s, it was assumed that agencies would naturally converge towards best practice financial management. The Financial Management Improvement Program (FMIP) was established to provide guidance to agencies on best practice financial management.

The assumption proved incorrect, and the Financial Management and Accountability (FMA) and Audit Acts were established to provide a non-discretionary imperative for the consistent management of financial resources and assets within and across Australian Government agencies. This approach has been effective over time in establishing and

maintaining an acceptable and consistent standard of financial management and public accountability across the Australian Government and its agencies.

The current situation with respect to the governance and management of information resources and assets held by the Australian Government is not dissimilar to that for financial resources in the early-mid 1980s, prior to implementation of the FMA and Audit Acts. The information arrangements and culture of most agencies is 'implicit', with little or no explicit administrative arrangements consistently addressing all information and data resources and assets held by agencies. The prospect of any fundamental improvement of information performance in this environment is negligible.

The FMA is a model act for the effective governance and management of resources and assets held by government, and could readily be adapted to establish an effective companion act for the management of information. Carriage of an IMA Act would be assigned to a Chief Government Information Officer, focused on the effective and efficient governance and management of information and data resources held by the Australian Government (with a stock value currently estimated at around \$30 billion). A separate role of Chief Government Technology Officer would be established to focus on technology infrastructure and service issues, providing a clear distinction between information and technology issues and priorities.

This approach would provide agencies with a clear non-discretionary imperative, direction and approach for improved governance, management and accountability for information. It would provide an effective complement to the Information Commissioner Bill, enabling the Information Commissioner to focus on the performance and output of the new structural arrangements – not their development and implementation. It would also remove the potential conflicts of interest that may arise as the Information Commissioner attempts to negotiate the implementation of new structural information arrangements with agencies under sustained budgetary pressure for the next 5-10 years.

#### **4. Governance and management of information resources & assets**

Modern financial resource management practice provides an effective model for the governance and management of information and data resources and assets held by government and its agencies. A feature of the approach is that it provides a meaningful and relevant set of management tools that enables line-of-business executives and managers to effectively plan, manage and account for the information resources and assets relevant to their line responsibilities.

Key elements of the model include:

- Explicit roles and responsibilities
- Explicit authority and accountability
- Explicit policies and processes
- Consistent resource and asset models and frameworks
- Consistent standards and practices
- Enabling infrastructure and services
- Compliance and audit mechanisms

All of the above are well defined for the management of financial and human resources and assets across and within Australian Government agencies. This is not currently the case for information resources and assets.

Given that the stock value of the Australian Government's information and data assets is currently estimated to be in the order of \$30 billion, this situation is a serious deficiency, with strategic implications for government performance, efficiency and risk.

## **5. Stewardship and custodianship of information and data**

The concepts of stewardship and custodianship for information and data resources and assets held by government are now well established.

The stewardship role for information and data embraces broad responsibilities for strategy, decision making, planning & resourcing, ensuring:

- the legitimate interests of all government, agency and public stakeholders are identified and adequately addressed;
- appropriate physical custodianship arrangements are in place for information and data;
- identification and management of strategic risks associated with information and data;
- appropriate accountability for information and data.

The custodianship role embraces operational responsibilities for information and data across the resource/asset lifecycle, including:

- clear responsibilities for the physical protection and proper use and dissemination of information and data;
- identification and management of operational risks.

The FMA Act effectively establishes these roles for financial resources. In the absence of general administrative legislation giving effect to these roles for information held in Australian Government agencies, consideration should be given to their incorporation in the Information Commissioner Bill.

## **6. Government framework for definition of information and data**

While various initiatives are currently being progressed to address aspects of the definition issue, there is currently no comprehensive non-discretionary cross-government approach to this problem. This creates a significant risk in relation to the establishment of standard agency publication schemes, with many major agencies reporting on common issues.

This issue must be addressed as a matter of priority. It will be essential to establish an approach that finds that right balance between the need for cross-government consistency and the legitimate requirement for some definitions to be varied at agency or sub-agency level to meet specific policy, program and legislative requirements.

## **7. Relevant qualifications and experience of the submission author**

David Glynne Jones is an information professional with over 31 years experience in public sector information, communications and technology management. He has a strong strategic and operational management background.

He has significant experience assisting executives, managers and operational staff to address complex business, information and technology-related issues and implement viable management and operational arrangements that improve organisational performance with reduced costs and risk. He has substantial current experience assisting

Australian Government organisations to improve their management and use of information, data and technology assets and resources through leading practice governance, management and operational arrangements and practices.

His expertise includes:

- Governance (organisational, information & data, technology)
- Strategic information management
- Information and data resource & asset management
- Enterprise reporting and analytics frameworks & processes
- Technology asset strategy, planning & investment
- Knowledge management
- Enterprise architecture
- Strategic and operational planning
- Complexity management & organisational development

David Glynne Jones has broad experience since 2000 in advising and assisting Australian Government agencies on information, data and related issues at branch, division, agency and cross-government level.

Relevant Australian Government agencies include:

- Treasury (Tax Review - current)
- FaCS/FaCSIA
- Centrelink
- DEWR/DEEWR
- DAFF/BRS
- DOTARS
- DITR
- ATSIC